



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2021-0410; FRL-8791-02-R9]

#### **Air Plan Limited Approval and Limited Disapproval; California; Air Resources Board; Volatile Organic Compounds**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of a revision to the California Air Resources Board (CARB) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from vapor recovery systems of gasoline cargo tanks. Under the authority of the Clean Air Act (CAA or the Act), this action simultaneously approves the rescission of a different statewide rule from the California SIP that previously regulated this emission source.

**DATES:** This rule is effective [Insert date 30 days after date of publication in the *Federal Register*].

**ADDRESSES:** The EPA has established a docket for this action under Docket No. EPA-R09-OAR-2021-0410. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who

needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** La Kenya Evans, EPA Region IX, 75

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**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

## **Table of Contents**

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

### **I. Proposed Action**

On October 21, 2021 (86 FR 58627), the EPA proposed a limited approval and limited disapproval of the following SIP revisions, that were submitted on August 22, 2018, for incorporation into the California SIP.

TABLE 1 - SUBMITTED SIP REVISIONS

Regulation or Provision	Regulation Title or Subject	Date of Local Action	State Requested Action
California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014	Certification of Vapor Recovery Systems for Cargo Tanks	Adopted on 07/25/13	Addition to the SIP
Certification Procedure CP-204	Certification Procedure for Vapor Recovery Systems of Cargo Tanks	Referenced in Section 94014 and adopted on 11/7/2014	Addition to the SIP

Test Procedure TP-204.1	Determination of Five Minute Static Pressure Performance of Vapor Recovery Systems of Cargo Tanks	Referenced in Section 94014 and adopted on 11/7/2014	Addition to the SIP
Test Procedure TP-204.2	Determination of One Minute Static Pressure Performance of Vapor Recovery Systems of Cargo Tanks	Referenced in Section 94014 and adopted on 05/27/2014	Addition to the SIP
Test Procedure TP-204.3	Determination of Leak(s)	Referenced in Section 94014 and adopted on 11/7/2014	Addition to the SIP
California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94004	Certification of Vapor Recovery Systems – Gasoline Delivery Tanks	Repealed on 06/29/1995	Rescission from the SIP
Method 2-5	Certification and Test Procedures for Vapor Recovery Systems of Gasoline Delivery Tanks	Referenced in Section 94004 and effective on 09/1/1982	Rescission from the SIP

We proposed a limited approval because we determined that these revisions improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 of the Act. These provisions include the following:

1. Executive Officer discretion in California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014, CP-204 Section 5.4 and incorporated by reference in TP-204.1, TP-204.2, and TP-204.3.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

## **II. Public Comments and EPA Responses**

The EPA's proposed action provided a 30-day public comment period. During the comment period we received two anonymous comments in support of EPA's October 21, 2021

proposed rule to limit VOC emissions and protect the environment. We acknowledge the comments, and we are approving the regulations that pertain to vapor emissions into the SIP. EPA received one comment from Silvio Mazzella Jr. providing additional reference materials. We acknowledge the additional information noted by the commenter.

We also received one comment from Isabelle Nield, which we respond to below.

**Comment:** The commenter's primary concern is that "[d]ue to the proposed rule's lack of compliance with the Clean Air Act...the rule should [not] be incorporated into the SIP in its current state." They recommend instead that "the proposed rule should be revised to address the deficiencies, then approved." Aside from this issue, the commenter notes the value of the proposed SIP revision for air quality in a range of areas, including reduction in outdoor VOCs and interstate emissions exchange from gasoline regulation.

**EPA's Response:** We understand the commenter to assert that the Executive Officer discretion issue that represents the basis for our limited disapproval of California Code of Regulations, Title 17, Section 94014 is significant enough to warrant not approving the entire rule into the SIP until the issue is corrected. We disagree.

As we noted in our October 21, 2021 proposed rule, a comparison of the revised Section 94014 as a whole with the current SIP-approved version, which was last approved on July 8, 1982, indicates substantial changes to the rule that improve the clarity, specificity, and stringency of the current SIP-approved rule. Additionally, the minor deficiencies the EPA identified in the SIP revision will not result in any degradation in California's air quality with respect to VOCs. As noted in the Technical Support Document found in the docket for our proposed action, at the time of the rule's submittal, CARB had never approved any of the equivalent test methods to Technical Procedure (TP)-204.1, TP-204.2 or TP-204.3 that are the subject of the limited disapproval in the nearly forty years of the rule's enforcement.<sup>1</sup> As a result, a limited approval of this rule will strengthen the SIP and allow the EPA to enforce VOC emissions from cargo tanks

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<sup>1</sup> EPA TSD p. 14, Docket ID: EPA-R09-OAR-2021-0410-0024.

with requirements that are more stringent than the rule that is currently in the SIP.

As discussed in our proposed action, documents submitted for inclusion into the SIP should not include unbounded director's discretion that allows the State to approve alternatives to the applicable SIP without following the SIP revision process described in CAA section 110. California Code of Regulations, Title 17, Section 94014, CP-204, Section 5.4, allows the Executive Officer to approve an alternative test procedure in certain situations where EPA Method 301 is not applicable, without approval from the EPA. This authority is then incorporated by reference in TP-204.1, TP-204.2, and TP-204.3. Without further specificity, these provisions represent unbounded director's discretion and constitute a SIP deficiency.

CAA sections 110(k)(3) and 301(a) provide the EPA with the authority to issue a limited approval and limited disapproval action that will strengthen the SIP and require the state to correct for the above SIP deficiency, and the commenter has not provided any information or supplemental evidence that would indicate this action is contrary to CAA requirements. Therefore, the EPA will proceed with the limited approval and limited disapproval of this rule as proposed.

### **III. EPA Action**

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule and referenced test procedures into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3) and 301(a), the EPA is simultaneously finalizing a limited disapproval of California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014.

As a result, the EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. In addition, the offset sanction in CAA section 179(b)(2) will be imposed 18 months

after the effective date of this action, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission from the State corrects the identified deficiencies before the applicable deadline.

Note that the submitted rules have been adopted by CARB, and the EPA's final limited disapproval does not prevent CARB from enforcing them. The limited disapproval also does not prevent any portion of the rules from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at:

<https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf>.

#### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. The EPA is also finalizing deletion of rules that were previously incorporated by reference from the applicable California SIP. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Section 94014 and the associated certification procedure and test procedures as described in Table 1 of this preamble, and finalizing the removal of Section 94004 and Method 2-5 also as described in Table 1 from the SIP. The EPA has made, and will continue to make, these documents available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions

that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be



filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: **March 30, 2022.**

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

### **PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for Part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

#### **Subpart F – California**

2. Section 52.220a, paragraph (c) is amended

a. In Table 1 by:

i. Removing the entry for “94004”; and

ii. Adding an entry titled “Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board); Subchapter 8 (Compliance with Nonvehicular Emissions Standards); Article 1 (Vapor Recovery Systems in Gasoline Marketing Operations)” after the entry for “94003”, and under the added heading, add an entry for “94014”; and

b. In Table 2 by:

i. Adding entries for “Certification Procedure CP-204”, “Test Procedure TP-204.1” “Test Procedure TP-204.2”, and “Test Procedure TP-204.3”, after the entry for “Method 2-4:

Certification and Test Procedures for Vapor Recovery Systems at Gasoline Terminals”; and

ii. Removing the entry for “Method 2-5: Certification and Test Procedures for Vapor Recovery Systems of Gasoline Delivery Tanks”.

The additions read as follows:

**§52.220a Identification of plan-in part.**

\* \* \* \* \*

(c) \* \* \*

**Table 1 - EPA-Approved Statutes and State Regulations<sup>1</sup>**

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*****				
Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board); Subchapter 8 (Compliance with Nonvehicular Emissions Standards); Article 1 (Vapor Recovery Systems in Gasoline Marketing Operations)				
94014	Certification of Vapor Recovery Systems for Cargo Tanks	4/1/2015	[INSERT Federal Register CITATION], [INSERT DATE OF PUBLICATION]	<u>Submitted on August 22, 2018 as an attachment to a letter dated August 16, 2018.</u>
*****				

<sup>1</sup> Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in Table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

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**Table 2 - EPA-Approved California Test Procedures, Test Methods, and Specifications**

Title/subject	State effective date	EPA approval date	Additional explanation
*****			
Certification Procedure CP-204 Certification Procedure for Vapor Recovery Systems of Cargo Tanks	4/1/2015	[INSERT Federal Register CITATION], [INSERT DATE OF PUBLICATION]	<u>Submitted on August 22, 2018 as an attachment to a letter dated August 16, 2018.</u>

Test Procedure TP-204.1 Determination of Five Minute Static Pressure Performance of Vapor Recovery Systems of Cargo Tanks	4/1/2015	[INSERT Federal Register CITATION], [INSERT DATE OF PUBLICATION]	Submitted on August 22, 2018 as an attachment to a letter dated August 16, 2018.
Test Procedure TP-204.2 Determination of One Minute Static Pressure Performance of Vapor Recovery Systems of Cargo Tanks	4/1/2015	[INSERT Federal Register CITATION], [INSERT DATE OF PUBLICATION]	Submitted on August 22, 2018 as an attachment to a letter dated August 16, 2018.
Test Procedure TP-204.3 Determination of Leak(s)	4/1/2015	[INSERT Federal Register CITATION], [INSERT DATE OF PUBLICATION]	Submitted on August 22, 2018 as an attachment to a letter dated August 16, 2018.
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[FR Doc. 2022-07106 Filed: 4/4/2022 8:45 am; Publication Date: 4/5/2022]